

under its interstate access tariffs. Further, Verizon's proposed tariff revisions will permit it to discriminate unreasonably among its interstate access customers, whether they are interexchange carriers, competitive LECs, or business end-user subscribers. Verizon will be able to selectively punish a successful competitor by maximizing its security deposits, while rewarding end user subscribers by reducing or removing any such requirements. These tariff revisions are inherently anticompetitive, and the negative impact of such provisions would only be magnified in the current industry environment.

11. Verizon asserts that the proposed revisions are necessary to avoid having it "bear 100% of the costs that inevitably occur when [its] customers fail to pay for services." Yet Verizon has offered no concrete evidence that the current tariff provisions offer an insufficient level of protection, or that it has sought to employ those provisions to their full effect to minimize its exposure. Certainly, Verizon has offered no reason for permitting it to insist that its entire customer base should be forced to act as guarantors of the payments that Verizon may be owed by individual carriers.

12. In its Designation Order, the Commission wisely acknowledges that, with respect to the risks of nonpayment, if permitted to implement the proposed tariff revisions, Verizon will dramatically alter the balance between it and its interstate customers that was struck approximately 20 years ago.<sup>21</sup> Verizon offers no evidence that this balance has become unfairly skewed by recent developments. Verizon claims that roughly 30% of its interstate uncollectibles in 2001 – or approximately \$39 million – can

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<sup>21</sup> Direct Case at 2.

<sup>22</sup> Designation Order ¶ 11.

be attributed to its **carrier-customers**.<sup>23</sup> Surprisingly, Verizon admits that it **has** no idea what portion of that \$39 million actually relates to interstate access **services**.<sup>24</sup> Some **portion, perhaps** most or even all, relates to the sale of UNEs or other services pursuant to interconnection agreements. Nor **does Verizon** have **any** data **on** the extent to which uncollectibles **under** its interstate **access tariffs** have been increasing or decreasing in recent years. Overall, **Verizon generated** profits of approximately \$1.1 billion in 2001, a **30.4%** increase over the **previous year**.<sup>25</sup> Further, **Verizon's** ARMIS reports **show that** it **earned** more than \$4.3 billion in revenues from its **interstate Special Access services** in 2001, and **that** its rate of return for those services **was** approximately **22%**.<sup>26</sup> These **figures** conclusively prove **that** there is **no** "problem" with **uncollectibles** under Verizon's **interstate** access tariffs today. **At a minimum, Verizon has failed** to meet its burden to **show** that these **tariff revisions are necessary to address** a serious "problem" that affects Verizon's financial health.

13. Clearly, the "utter crisis" in the telecommunications industry **has** not affected the **revenues or profits** that **Verizon earns** under the **tariffs** that it **now** seeks to revise. In light of these **data**, it is apparent that there is no legitimate basis, **other** than

<sup>23</sup> See *Direct Case* at 13-14 (Specifically, in 2001, Verizon claimed that its total uncollectibles for 2001 were \$110.3 million for Verizon-East and \$18.96 million for Verizon-West, while carrier uncollectibles had grown to roughly 30% of the total uncollectibles for the company or approximately \$33 million for Verizon-East and approximately \$5.7 million for Verizon-West).

<sup>24</sup> *Id.* at A-9, n.6

<sup>25</sup> Verizon Company Profile for 2001, *US Business Reporter*, [http://www.activemedia-guide.com/profile\\_verizon.htm](http://www.activemedia-guide.com/profile_verizon.htm).

<sup>26</sup> See Friedlander Declaration, AT&T Petition, ¶¶ 3-7 (citing to the 1996.2001 ARMIS 4301, Table I. Costs and Revenue Table, Special Access, Column (s). Average New Investment, Row 1910 and Net Return, Row 1915); see also ARMIS data 43-04: Table 1. Separations and Access Table, (Verizon earned approximately \$2.3 billion in Switched Access Revenues for the year 2001) available at <http://gullfoss2.fcc.gov/cgi-bin/websql/prod/ccb/armis1/forms/output.htm>.

Verizon's greed and anticompetitive designs, for the Commission to change the "balance" between Verizon and its customers' interests that **is embodied** in the current **tariff** provisions?

14. Although Verizon seems to **enjoy** repeating the quotation that the industry **is** in "utter crisis," it **offers** no objective basis **to** believe that the volatility experienced during **the** past several years will continue **on** a permanent basis. Indeed, it would **seem** almost impossible for that to be the case. The **rash** of bankruptcies that plagued the industry has eliminated the weakest competitors, and **there** is **no** legitimate basis to believe that the **remaining** competitors **present** the same level of bad debt **risk that** Verizon may **have faced** in the past **two** years. The irony of Verizon's **tariff revisions is** that they have **been** filed **just** as the alleged "problem" they are supposed to **redress has** begun to dissipate.

15. The Joint **Commentem** believe it is a Critical flaw in Verizon's Direct Case that, **as** noted above, it presents no **data on** the level of uncollectibles attributable to its interstate access **tariffs**. Verizon **asserts** that it "does not account for its uncollectibles by type of service, therefore it does not have available **just** the 'access' service **portion** of uncollectibles associated with these **tariffs**."<sup>28</sup> From **this** lack of **information** and effort, it is evident that Verizon does not even **know** how big the alleged problem **that** it is **seeking** Commission assistance **to guard** against actually **is**, or whether the existing **tariff** provisions, if used, could not provide sufficient protections. Without such a **showing**, the

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<sup>27</sup> *Direct Case* at A-8.

<sup>28</sup> *Id.* at A-11.

Commission should not be ~~lured~~ into providing Verizon with *carte blanche* permission to implement proposed ~~tariff~~ revisions that will **do** nothing more ~~than~~ shore up Verizon's already ~~near~~ monopoly **status** and market dominance over its few remaining ~~competitors~~.

16. When **asked** by the Commission to describe its billing and collection processes to help the Commission's understanding of the ~~increase~~ in the level of uncollectibles,<sup>29</sup> Verizon chose instead to shift the blame onto the "growing number of customers that are going out of business **and filing** for bankruptcy."<sup>30</sup> When specific questions **about** the length of time to **render** bills **was** asked by the **Commission**,<sup>31</sup> Verizon **admits** that it can take up to ten **days after** the bill date for a paper bill **to** be issued in the Verizon-East states and eight **days** in **Verizon-West**.<sup>32</sup> Verizon offers no justification for **these** delays. **Nbr** does it **forthrightly** acknowledge that its bills **are** typically riddled with **errors and that** the **review** of these bills **has** become a **complex** time and resource **consuming process** (in fact, it **has** become an **industry**). If Verizon is concerned about timely receipt of payments ~~from~~ its customers, Verizon **should** strive to issue bills faster **and** more accurately, thus providing its customers ~~with~~ more time to review, make payments, and if **necessary**, dispute charges contained therein.

17. In addition to its current security deposit requirements, Verizon **has other** protections to ameliorate the risks associated with delayed payments ~~from~~ customers when Verizon bills its services in advanced. These protections come in the **form** of late

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<sup>29</sup> *Designation Order* ¶ 13.

<sup>30</sup> *Direct Case* at A-15.

<sup>31</sup> *Designation Order* ¶ 13.

<sup>32</sup> *Direct Case* at A-17.

payment charges on delinquent amounts owed to Verizon, assessed ~~at~~ either the rate of the highest interest rate (in decimal value) which may be ~~levied~~ by law for commercial transactions, or **0.00024657 per day?** Contrary to Verizon's assertion, interest on late payments **does** reduce Verizon's **"risk or exposure"** associated with amounts past ~~due~~."

18. In the *Designation Order*, the Commission ~~inquired~~ about possible changes in customer behavior and ~~requested~~ that Verizon provide it with the percentage of carrier bills disputed, billed revenue disputed and disputed **amounts adjusted**.<sup>33</sup> Verizon responded by noting that "one of the largest factors that ~~has~~ contributed to the growth of ~~outstanding receivables~~ is the recent, **growing** number of customers that are going **out of business**."<sup>36</sup> Yet Verizon fails to **justify** the ~~need~~ for **the revised tariff** provisions based on any change in customer behavior in regards to ~~disputed~~ amounts. **Furthermore**, because under the terms of the ~~tariff~~, ~~customers~~ are permitted to dispute charges on ~~their~~ bills, it is not ~~unusual~~ for a carrier under Verizon's interstate access tariff to dispute ten-to-twenty percent or more of the charges each month. In most **cases**, the charges in dispute ~~are~~ found to be in the challenging ~~carrier's~~ favor (if ~~the~~ carrier-customer can actually get Verizon to devote the ~~resources~~ to the dispute). The frequency and success ratio of billing ~~disputes~~ **shows** that it is ~~unreasonable~~ for Verizon to ~~seek to~~ implement its **security** deposit and service discontinuance practices.

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<sup>33</sup> See Section 2.4.1 (B)(3)(b) (I) and (II), Verizon Tariff FCC No. 1 (eff. Apr. 28, 2001); *see also* Section 2.4.1. (B)(3)(b)(I) and (II), Verizon Tariff FCC No. 11 (eff. Apr. 28, 2001)(~~modifying the amount per day to 0.0005~~).

<sup>34</sup> *Direct Case* at A-20.

<sup>35</sup> *Designation Order* ¶ 13.

<sup>36</sup> *Direct Case* at A-15.

19. The Commission also inquired into Verizon's billing of services in advance or in arrears.<sup>37</sup> Verizon's responses provide evidence that Verizon already has in place adequate protections to guard against the risk of nonpayment. According to its Direct Case, "[c]harges associated with service usage (switched access) and the Federal Government are billed in arrears. Charges for all other services generally are billed in advance."<sup>38</sup> Joint Commenters assert that there is inherently less risk associated with billing in advance than there is associated with billing in arrears. Certainly, there is no legitimate basis for imposing the same size of deposit requirement without regard to whether the service is billed in arrears or in advance. Although Verizon notes that bills sent in advance are not due until 30 days later, which may be just after the service has been provided, Verizon cannot deny that its exposure to uncollectibles is significantly reduced when it bills in advance rather than in arrears. The fact that an increasing portion of all ILECs' services are billed in advance shows that the original "balance" between customers and the ILECs struck 20 years ago continues to be appropriate today.

20. Nor should the Commission permit Verizon to gloss over the amounts it often owes to carriers (including reciprocal compensation). Even if Verizon is correct that those amounts are less than the amounts it is owed under its interstate access tariffs, the fact remains that the level of Verizon's exposure to bad debt losses is reduced to a significant extent by these reciprocal payment obligations.

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<sup>37</sup> Designation Order ¶ 14.

<sup>38</sup> Direct Case at A-19.

21. When requested to indicate the **amounts** of unpaid bills attributed to carriers filing for **bankruptcy**,<sup>39</sup> **Verizon** states that “[t]he vast majority **of bankruptcies** are still open and it could take years to recover any cure **or settlement money**.”<sup>40</sup> By its **own admission, Verizon is unable to provide an actual** figure. **Verizon’s** example, that of WorldCom owing it approximately **\$450** million in the **months** prior to **seeking** bankruptcy protection. fails to acknowledge that it has been able to **recover at** least some portion **of** pre-petition debts from WorldCom.<sup>41</sup> The Joint Commenters believe that **this** has **been** the case in other bankruptcies **as well**. **Furthermore**, Joint Commenters contend that **Verizon** has been able to secure **some form** of payments from a **carrier-customer** who ultimately went out of business while in bankruptcy. Hence, Verizon’s failure to provide any concrete **data** on the amount of unpaid invoices **under these** tariffs due to bankruptcies removes any possible **justification** for the instant **tariff** revisions.

22. While **Verizon** contends that “there is nothing in the proposals that attempt to override the **[Bankruptcy] Code**,” **Verizon** has publicly acknowledged that “[i]t is likely that the protections instituted by the court will be sufficient **to protect Verizon’s** interests **as long as** WorldCom’s financial position does not materially worsen.”<sup>42</sup> If Verizon **can** tell the world that it does not need new security deposits and payment

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<sup>39</sup> *Designation Order* ¶ 15.

<sup>40</sup> *Direct Care* at A-23.

<sup>41</sup> “WorldCom Extends Verizon Billing Pact,” *TR Daily*, Sept. 4, 2002 (“WorldCom will pay to Verizon \$34.5 million that it owed the company prior to entering bankruptcy proceedings in July.”).

<sup>42</sup> *Direct Care* at A-23.

<sup>43</sup> See “Judge Compromises on LEC’s Request **for** Tougher WorldCom Payment Plan,” *TR Daily*, August 15, 2002.

structures to cover the **amounts owed to** it by WorldCom, it certainly does not now need new and additional **means** of imposing such **requirements** on its other competitors whose levels of service purchased from Verizon nowhere match the **amounts** purchased by WorldCom.

23. The Joint Commentem agree that, **as** indicated by the Commission, the provisions included in Verizon's proposed **tariff** revisions "give Verizon considerable discretion **to enforce** [the tariff] provisions."<sup>44</sup> Verizon itself concedes that it **has** discretion in deciding whether and upon which carriers to **impose** a **security** deposit requirement!<sup>45</sup> The so-called "objective" criteria **that** Verizon points to allows Verizon vast **latitude** in **weighing** one criterion more heavily **than another and, as** Verizon so often **points out**, will only **by** implemented on a "may" basis,<sup>46</sup> providing Verizon with **unfettered** discretion to determine when **and on whom** it **wishes to impose** its requirements **and demand** a security deposit **or** advance payments. Verizon's assertion that it has no "incentive" to be discriminatory **falls** of its own weight.<sup>47</sup> As **the** dominant local **carrier**, Verizon has both the incentive and the ability to **selectively** impose burdensome **deposit** requirements in **order** to punish **successful** competitors and undermine local competition. **As** evidenced by the Bell Companies' **willingness** to pay **many** tens of millions of dollars in fines in order **to** thwart local competitors, the prospect

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<sup>44</sup> *Designation Order* ¶ 19

<sup>45</sup> *Direct Case* at 24-25 (claiming that it should be **reasonable** for Verizon to have **the same** discretion it **has** regarding discontinuance of service when it **undertakes** to **establish a form of adequate assurance in the form of security deposits and prepayments**).

<sup>46</sup> *Id.* at A-4, A-5.

<sup>47</sup> *Id.*



of paying interest at 18.25%<sup>48</sup> will not deter Verizon from taking actions that entrench its monopoly position by imposing monetary burdens on local competitors.

24. The proposed “objective” criteria for evaluating a customer’s creditworthiness are overbroad and arbitrary. The creditworthiness criteria are designed to ensure that all of Verizon’s competitors are subject to a requirement to pay millions of dollars in deposits, and continue to be forced to subsidize Verizon’s shareholders, as well as the servicing of Verizon’s own massive debt levels.<sup>49</sup> Verizon has failed to set forth any plausible rationale for imposing them on any or all carrier customers.

25. Verizon’s claim that its alternatives to the two months security deposits are beneficial to its cash strapped customers by providing it with flexibility in dealing with customers who wish to provide adequate assurance of payment other than a cash security deposit,<sup>50</sup> ignores that these alternatives (a letter of credit or one month advance payment) may be just as difficult to comply with as a security deposit. Letters of credit can be difficult to obtain and are expensive to maintain. Advance payments, in a time where working capital is scarce and the availability of additional investment capital is nearly impossible to secure, are burdensome to comply with at any time. Further, advance payments work effectively only when the LEC has a reliable and efficient

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<sup>48</sup> *Id.*

<sup>49</sup> See “Verizon Reins in Forecast; Profits Lost Among Charges” *TR Daily*, July 31, 2002 (citing to Verizon’s 2Q earnings report indicating a 2.1 billion net loss for the second quarter of 2002 as a result of 4.2 billion in charges, \$3.2 billion of which was tied to asset write-downs related to its investments in telecom companies including Genuity, Inc., Telus Corp., and Cable & Wireless pk. and \$475 million was severance-related); see also See Jane Black, *Is Verizon a Champ or a Pretender?*, Business Week Online, June 10, 2002 at 2 (“Declining margins and profits are raising questions about Verizon’s \$60 billion debt load. On May 31, Moody’s announced it was reviewing the Baby Bell’s long-term debt ratings for a possible downgrade”).

<sup>50</sup> *Direct Case* at A-26

billing **system**, which Verizon **does** not possess today. In **sum** these **alternatives** do not demonstrate Verizon's desire to work with its customers. Rather, they demonstrate that Verizon is seeking to do nothing more than **weaken** its competition by demanding unreasonable and **unjustified** modifications to its **tariff** provisions.

26. The Commission requested that Verizon "explain how each of these factors [3, 4, 5, and 6 **used** by Verizon to determine a customer's creditworthiness] is a valid predictor of whether the carrier **will** pay its interstate **access bill**."<sup>51</sup> Verizon **has** not demonstrated how any of the factors it proposes to **use** to determine whether a **security** deposit will be required **are** valid **predictors** of the likelihood of a customer paying its **access bill**. **As** stated in the *August 1, 2002 Petition to Reject*,<sup>52</sup> the criteria selected to **determine creditworthiness** provide Verizon with too much **discretion in** determining whether **or** not to require its **customers**, most of whom **are** direct competitors with Verizon in the local and long distance market, to provide a **security** deposit.

27. Verizon does not provide sufficient justification to explain why it **needs** to impose a deposit in an amount **based** on estimated future billings when "the customer has fallen into **arrears** in its account balance **in any two (2) months out of any** consecutive twelve **(12)** month period." **As** pointed out in its *August 1, 2002 Petition to Reject*, there is **no minimum** threshold time or **amount** requirement for the amount **in arrearage**. **As** the tariff **revision is** currently drafted, **Verizon could** demand a deposit of millions of dollars on a carrier that was in arrearage less than \$50 in February and then again for a **few** more

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<sup>51</sup> *Designation Order* ¶ 21.

<sup>52</sup> *August 1, 2002 Petition to Reject* at 2.

dollars in October. **As** written, there is little if any nexus between a payment pattern that would trigger a deposit and a payment pattern that may indicate an extraordinary risk of nonpayment. Certainly, Verizon should not be permitted to consider disputed amounts to be in arrears, either for determining when to impose a security deposit or deciding how much of a deposit to require. Indeed, permitting Verizon to consider disputed amounts to be in arrears would give it an incentive to avoid correcting, and indeed to make worse, its current billing systems, which are systematically inaccurate and unreliable. Because carrier customers routinely dispute significant percentages of their billings and typically experience a high success rate in doing so, Verizon should not be permitted to regard such amounts as in arrears for deposit purposes.

28. In addition, setting the threshold that triggers the imposition of a deposit of \$250,000 owed for more than 30 days is unreasonable. Carrier customers routinely pay many millions of dollars per month for services provided by carriers such as Verizon. To set the threshold so low would virtually assure Verizon the ability to impose million dollar deposits on almost all carrier customers.

29. In addressing criteria 3 and 4,<sup>53</sup> Verizon alleges that "if a customer or its parent satisfies one of the criteria above [with regards to being in bankruptcy or receivership, or admits its inability to pay debts as they become due], it is stating it is unable to pay all of its future bills." This conclusion is incorrect. As stated above,

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<sup>53</sup> Designation older ¶ 21 (criteria 3: the customer or its parent informs Verizon or publicly states that it is unable to pay its debts as such debts become due. Criteria 4: the customer or its parent has commenced voluntary or involuntary receivership or bankruptcy).

<sup>54</sup> Direct Case at 8.

Verizon has been able to secure payments from carriers such as WorldCom,<sup>55</sup> who are in bankruptcy, and other carriers such as XO Communications, who are getting ready to emerge from bankruptcy.

30. Verizon's discussion of criteria 5 and 6<sup>56</sup> fails to demonstrate any link between debt securities ratings and the ability for the carrier customer to meet its obligations to Verizon. As currently written, these criteria would apply to virtually all competitive carriers, regardless of their payment history with Verizon. In fact, the Joint Commenters believe that based on this requirement alone, Verizon should be imposing security deposits on its own affiliates,<sup>57</sup> although Verizon presently does not appear to be doing so.<sup>58</sup>

31. In the *Designation Order*, the Commission inquired about payment characteristics of defaulting interstate access customers during the year prior to the ninety (90) days in default and any other payment patterns that may be identified that would allow Verizon to trigger the security deposit requirements already in place.<sup>59</sup> Verizon stated that it "is not aware of any 'typical' pattern for customers prior to the time an account is ninety days or more overdue"<sup>60</sup> and instead, provided only a cryptic assertion

<sup>55</sup> "WorldCom Extends Verizon Billing Pact," *TR Daily*, Sept. 4, 2002.

<sup>56</sup> *Designation Order* ¶21 (criteria 5: the customer's or its parent's senior debt securities are below investment grade as defined by the Securities and Exchange Commission. Criteria 6 the customer's or its parent's senior debt securities are rated the lowest investment grade category by a nationally recognized statistical rating organization and are put on review by the rating organization for a possible downgrade).

<sup>57</sup> See "Moody's Cuts BellSouth Outlook; Eyes Other Bell Debt Ratings," *TR Daily*, August 8, 2002.

<sup>58</sup> *Direct Case* at A-30.

<sup>59</sup> *Designation Order* ¶ 22

<sup>60</sup> *Direct Case* at A-30.

that “[w]hile a customer’s past payment history is still a good predictor of future payment, it cannot be the **only** one,” without going into **any** further explanation **other** to worry about not receiving “adequate assurances” for payment! **Here**, the Commission essentially has asked Verizon **to** substantiate its claim that the existing deposit provisions have **been used** and have **failed to** protect – and, *rather than* substantiate **its** claim, Verizon simply **asks** the Commission to take its word in place of fact. Obviously, **more** compelling evidence should be required to upend a regime that has **worked** well for approximately **20** years.

**B. Notice ~~for Deposit~~ and Shortened Termination Period**

32. In response to the Commission’s **inquiry** into the **need** to shorten the notice period from **30 days** to **seven** days prior to termination of **service**,<sup>62</sup> Verizon stated that the change is necessary so that it “can limit its prospective exposure to customers who have not paid for services **already received**.”<sup>63</sup> This justification is not reasonable, particularly since **the** reduction in time, if permitted to be implemented, **threatens** substantial **harms** to customers by **permitting** Verizon **to**, of its own volition, discontinue service to carrier customers who, in turn, **are** providing service **directly** to the public. To permit Verizon to reduce the minimum notice period prior to termination would **cause** tremendous harm both to its competitors and to **consumers** whose **service** could easily be disrupted. In addition, the **proposed** seven **day** time period that Verizon alleges is necessary **to** protect it **from** the risks of doing business in the **telecommunications** sector

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<sup>61</sup> *Id.* at A-31.

<sup>62</sup> *Designation Order* ¶ 27.

<sup>63</sup> *Direct Case* at B-1, B-2.

would not allow for a reasonable amount of time in which the carrier customer can cure the defects or reconcile disputes.

33. The Joint Commenters are not comforted by the fact that “Verizon almost never sends notice of termination....to a customer on the first day that it is entitled to send such a notice.” There is nothing in the proposed tariff revisions that would prevent Verizon from sending the notice on the first day available, despite Verizon’s assertion that it chooses not to so. The Joint Commenters contend that without a substantial showing by Verizon of a need for the revisions, the current tariff provisions available to Verizon should be enough.

34. Furthermore, Verizon’s claim that there already is a “long lag time” between when services are rendered and the issuance of the notice of discontinuance does not justify shortening the period before termination. If anything, Verizon’s indication of the amount of time involved from sending the bill (which, by Verizon’s own figures, takes an unnecessarily long time from the end of the billing cycle to rendering of the bill), resolving disputes, and then Verizon issuing a termination notice, demonstrates that shortening the time involved would serve no other purpose than to harm Verizon’s direct competitors, its interstate access customers.

### C. Refund of Deposits

35. Recognizing the concerns of the Joint Commenters, the Commission questioned the reasonableness of Verizon’s policy on deposit refunds.<sup>65</sup> In its *Direct*

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<sup>64</sup> *Id.* at B-2.

<sup>65</sup> *Designation Order* ¶ 30.

Case, Verizon fails to demonstrate that its refund policy, **as** proposed in its tariff revisions, **is** reasonable. In a time where **working** capital is **scarce** and the availability of additional investment capital **is** nearly impossible for carriers to secure, it is reasonable for **Verizon's** interstate access customers to want to **govern** their conduct in a **manner** that will **ensure** that they will receive their security deposit **back upon** meeting a set threshold, such **as** making timely payments for a twelve (12) month **period**. Otherwise, carrier customers **can** never count on a refund of **a security deposit amount** and it **becomes** a matter entirely entrusted **to** the unilateral discretion of **a direct** competitor. **Verizon**.

36. **Further**, if Verizon's **main concern** is to ensure it has "adequate **assurances**" for payment of its **services from its customers**, payment alone should be **enough** to **permit** a **customer** to **obtain** its **security deposit**. The **additional requirement** that "the customer no longer **satisfies any of the criteria for requiring a deposit or advance payment**"<sup>66</sup> **is unnecessary**. A customer could easily make all its **payments**, have no outstanding **mounts owed** to **Verizon**, yet still be **required** to provide Verizon with a **security deposit** of up to two (2) months payment in order **to ensure** Verizon continues to provide it with service. **To permit Verizon to do this is highly anticompetitive**. **Verizon** does not provide a reasonable justification **as to why a customer must satisfy both** particularly in light of the fact that its primary concern is receiving payments, **nor docs** it provide a correlation between its imposition of the security deposit and a customer **satisfying only one of the criteria**, while, at the same time, maintaining **a perfect** payment history.

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<sup>66</sup> *Direct Case at C-3 (quoting Section 2.4.1(A)(4), Verizon FCC Tariff No. 1).*

**D. Application of Revised Deposit Requirements to Term Plan Customers**

37. The Commission correctly acknowledges in the *Designation Order* ~~that~~ the requirement of providing a new ~~or increased~~ security deposit to Verizon would significantly reduce ~~the~~ carrier's working capital, which could also affect ~~other~~ capital or loan commitments the customer ~~has~~.<sup>67</sup> The Joint Commenters agree with the Commission's assertion that implementing the change to Verizon's tariff would be a serious destabilizing event in the competitive marketplace, and that the new security deposit requirements, if implemented, could potentially cause ~~the carrier~~ to need to restructure or terminate some services, which would, in turn, trigger a termination penalty to be assessed by Verizon.<sup>68</sup>

38. As demonstrated previously, the changes proposed by Verizon to its tariff are indeed material changes that impact Verizon's term plan customers.<sup>69</sup> Material changes, according to Commission precedent, include those changes that have a direct impact on the performance or the overall structure of the contract, such as guarantees and other provisions, which impact the customer's fundamental legal obligations and rights under the contract.<sup>70</sup> The change in the deposit requirements are not merely a form of "adequate assurance" as Verizon asserts, it is, as the Commission points out, a reduction

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<sup>67</sup> *Designation Order* ¶ 32.

<sup>68</sup> *Id.* ¶ 32

<sup>69</sup> See August 1, 2002 *Petition to Reject* at 14-15.

<sup>70</sup> See, e.g., *RCA American Communications, Inc., Revisions to Tariff* FCC Nos. 1 and 2, CC Docket No. 80-766, Transmittal Nos. 191 and 273. *Memorandum Opinion and order*, 86 FCC 2d 1197.7 1 (proposing to "substantially increase rates in its tariff). ¶¶ 16-18 (proposing, among other things, to shorten the service terms of the tariffs) (1981).



in working capital, which would be a serious destabilizing event in the competitive marketplace?’

39. Furthermore, despite its efforts to find support to the contrary, Verizon’s justifications do not pass under the substantial cause test established in *RCA American Communications, Inc.*<sup>72</sup> The “current economic climate”<sup>73</sup> is not a sufficient justification to warrant the change, particularly considering how the changes in the security deposit structure would have a significant impact on Verizon’s customers’ working capital levels, as well as their capital and loan commitments.<sup>74</sup> In addition, Verizon’s claim that “moat of the changes simply enumerate in detail the situations in which Verizon can require ‘adequate assurances’ and the form that assurance will take”<sup>75</sup> ignores the fact that when a customer signs up to a term plan, it expects stability among all material terms and conditions, not just the rates, as the *quid pro quo* for its agreement to purchase service for a specific term and to pay penalties for early termination. The deposit and discontinuance of service provisions are undeniably material terms of the long-term interstate access arrangements. Verizon cannot claim that these changes are not material. Verizon has not satisfied the requirements under the substantial cause test to warrant implementing the changes to its tariff.

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<sup>71</sup> Designation Order 131.

<sup>72</sup> *RCA American Communications, Inc.*, Memorandum and Order, 84 FCC 2d 353.358 (1980); *id.* 86 FCC 2d 1197, 1201 (1981); 94 FCC 2d 1338.1340 (1983).

<sup>73</sup> Direct Case at D-2.

<sup>74</sup> Designation Order 133.

<sup>75</sup> Direct Case at D-1, D-2.

**III. CONCLUSION**

For *the foregoing* reasons, Verizon has not provided the Commission with substantial justifications in its *Directr* Case to warrant implementing its proposed tariff revisions to Tariff FCC Nos. 1, 11, 14 and 16 submitted in *Transmittal No. 226*. Therefore, the Commission should deny Verizon's request to modify its Tariff FCC Nos. 1, 11, 14 and 16.

Respectfully submitted

**ALLEGIANCE TELECOM, INC.,  
BROADVIEW NETWORKS, INC.,  
CABLE & WIRELESS,  
KMC TELECOM HOLDINGS COR),  
TALK AMERICA INC.,  
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*Their Counsel*

Date: November 12, 2002

**CERTIFICATE OF SERVICE**


I, Erin W. Emmott, hereby certify that, on this 12<sup>th</sup> day of November 2002, 8 copy of the foregoing *Opposition to Direct Case of Verizon Telephone Companies*, was sent, as indicated, to the following individuals:

Marlene H. Dortch, Secretary (**Electronically**)  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Julie Saulnier (**Electronically**)  
Wireline Competition Bureau  
Federal Communications Commission  
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Federal Communications commission  
445 12<sup>th</sup> Street, S.W. Room CY-B402  
Washington, D.C. 20554

  
Erin W. Emmott



## **EXHIBIT D**

**Before the  
Federal Communications Commission  
Washington, D.C. 20054**

<b>In the Matter of</b>	)	
	)	
<b>BellSouth Telecommunication Inc.</b>	)	<b>WC Docket No. 02-304</b>
<b>Tariff FCC No. 1, Transmittal Na 657</b>	)	

**OPPOSITION TO DIRECT CASE**

**ALLEGIANCE TELECOM, INC.,  
CABLE & WIRELESS,  
ITC^DELTA COM COMMUNICATIONS, INC.,  
KMC TELECOM HOLDINGS, INC.,  
NEWSOUTH COMMUNICATIONS CORP.,  
NUVOX COMMUNICATIONS, INC.,  
TALK AMERICA INC., AND  
XO COMMUNICATIONS, INC.**

**Robert J. Aarnoth  
John J. Heitmann  
Erin W. Emmott  
KELLEY DRYE & WARREN LLP  
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(202) 955-9600**

*Their Attorneys*

**Date:**           **October 24, 2002**

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Before the  
Federal Communications Commission  
Washington, D.C. 20054

In the Matter of	)	
	)	
BellSouth Telecommunication Inc.	)	WC Docket No. 02-304
Tariff FCC No. 1, Transmittal No. 657	)	

**OPPOSITION TO DIRECT CASE**

Allegiance Telecom, Inc., Cable & Wireless, ITC^DeltaCom Communications, Inc., KMC Telecom Holdings, Inc., NewSouth Communications Corp., NuVox Communications, Inc., Talk America Inc., and XO Communications, Inc., (hereinafter the "Competitive Coalition"), by their attorneys, hereby submit to the Federal Communications Commission ("FCC" or the "Commission") their Opposition to the Direct Case of BellSouth Telecommunications, Inc. ("BellSouth") submitted to the Commission on October 10, 2002 ("Direct Case"), pursuant to the Commission's Order released September 18, 2002,<sup>1</sup> in connection with BellSouth's Transmittal No. 657.<sup>2</sup> As a matter of administrative economy, the Competitive Coalition hereby requests that the Commission incorporate into the record of this proceeding the Competitive Coalition's Petition to Reject or, Alternatively, to Suspend and Investigate, filed with the Commission on July 26, 2002 ("*July 26, 2002 Petition to Reject*"), attached hereto as *Exhibit A*. In addition, the Competitive Coalition requests that their "Petition to Reject or, Alternatively, to Suspend and Investigate" filed with the Commission on May 20, 2002 ("*May 20, 2002 Petition to Reject*"), attached hereto as *Exhibit B*, in response to the

<sup>1</sup> BellSouth Telecommunications Inc., Tariff FCC No. 1, Transmittal No. 657, Order, WC Docket No. 02-304, DA 02-2318 (rel. Sept. 18, 2002) ("*Designation Order*").

<sup>2</sup> On August 2, 2002, the Commission suspended BellSouth's proposed tariff revisions for a five (5) month investigation period. BellSouth Telecommunications, Inc., Tariff FCC No. 1, Transmittal No. 657, Order, DA 02-1886, rel Aug. 2, 2002 ("*BellSouth Suspension Order*").



original BellSouth tariff revisions filed under Transmittal No. 635, also be incorporated into the record of the above-captioned docket.

## **I. INTRODUCTION AND SUMMARY**

1. The proposed tariff revisions contained in BellSouth's Transmittal No. 657 represent BellSouth's third attempt to dramatically expand the scope of the security deposit requirements contained in its Tariff FCC No. 1. On August 2, 2002, the Commission suspended the proposed tariff revisions for a period of five (5) months and commenced investigation into the proposed revisions.

2. Among other things, the proposed revisions, if implemented, would permit BellSouth to impose security deposits on new as well as existing customers upon BellSouth's determination that the customer is not creditworthy, under a vague and arbitrary standard administered by BellSouth. As the Commission properly noted in its *Designation Order*, "[t]he proposed revisions to the security deposit terms significantly alter the balance between BellSouth and its intrastate access customers with respect to the risks of nonpayment of interstate access bills" that has remained in place for roughly the last twenty (20) years.<sup>3</sup>

3. If permitted to be implemented, these tariff revisions would provide BellSouth with the ability to unilaterally impose new and arduous deposit requirements (or their equivalent) on its interstate access customers, which could result in the shifting of millions of dollars of scarce working capital from BellSouth's carrier customers to their *direct* competitor, BellSouth.

4. BellSouth claims that these changes are necessary to protect it from the eminent risks and pitfalls resulting from "the current market volatility" now plaguing the